Neutrals.

1. Mr. M. A. Chacko.
2. „ George Chakyamuri.
3. „ C. Ittiravi Nambudiri.
4. „ M. Krishna Menon.
5. „ P. Krishna Menon.
6. „ Paul Mampilli.
7. „ Popatlal Goverdhan Lalan.
8. „ P. Raman Menon.
9. „ A. Sankara Menon.
10. Dr. K. Sankara Menon.
11. Mrs. Swaris.

Resolution No. 5.

Promotion of Under-graduate Clerks of the Huzur Secretariat to Superintendents' Cadre.

The following Resolution standing in the name of Mr. P. C. Varkey was considered withdrawn as the mover was absent :—

"This Council recommends to the Government that the existing under-graduate clerks of the Huzur Secretariat be promoted to the cadre of Superintendents in the order of seniority provided they possess the requisite test qualifications as is done in British India in cases of non-selection appointments."

The following Amendment to the resolution standing in the name of the same member was likewise considered withdrawn.

"Between the words 'they' and 'possess' add the words 'are efficient and'.

Resolution No. 6.

Transferring of Judicial Officers to the Executive Departments of the State.

Mr. T. A. Ramachandra Ayyar.—I have moved an amendment, Sir.

Deputy President.—The Hon'ble Member has moved an Amendment to omit the words "judicial officers especially" and that amendment was accepted and the Resolution as amended reads as follows: *"This Council recommends to the Government that in future Judges of the Chief Court should not be transferred to the Executive Departments of the State."* You can move the Amended Resolution.

Mr. T. A. Ramachandra Ayyar.—Sir, After performing the opening ceremony of the then High Court buildings

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His Excellency the Governor of Madras handed over the bunch of keys of the new Buildings to the then Chief Justice Sir Arthur Collins. He respectfully asked His Excellency to place the keys on the ground remarking that he wants to administer justice without fear or favour of man and with fear of only God. If the same spirit should pervade—and it ought to pervade every judicial officer—the executive line should be completely shut up from him. This is more so with the Judges of the Chief Court who if only aspired to the place of the Diwan of the State, the human element in them will naturally assert and knowingly or unknowingly they are likely to be carried away from the path of stern justice. They will naturally be disinclined to go against Government interest in suits where Government may be a party and there are so many other ways through which they may go astray if there are chances of their getting higher and more remunerative posts from the Government. Further, now and then losing touch with judicial administration by entering the executive, when they again enter the judicial line as it very often happens, they forget the very little law they have known before. It appears the unwritten rule in British Administration seems to be that while executive officers are occasionally sent to the judicial line judicial officers are very seldom transferred into the executive line.

In fact literally the life and property of the subjects of the State are very often entrusted into the hands of the judicial officers and it is therefore proper that all temptations which are likely to lead them astray from the path of stern justice and which are likely to make them feel less independent should be kept away from them. They should be independent to the very core.

Mr. A. Eachara Menon.—I beg to second it.

Dr. A. R. Menon.—Sir, I rise to support this resolution and in doing so I wish to make one or two observations. It is well known that it is to the interest of the people that the judicial and the executive powers should not be entrusted in the same hand. In that one respect at least we are in advance of British India, viz., that we have succeeded in separating the judiciary from the executive long long ago. That is a reform, that is an advancement which may, with great benefit, be imitated, by other States and British India. Now, though we have succeeded in separating these two departments we have not succeeded in keeping the officers of these departments separate. Somehow or other they have a tendency to wriggle out from one department to the other and to some extent this happens

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because here the promotion and everything is considered in respect of the person and not in respect of any sound principle. Let me make myself clear. If the District Judge is getting Rs. 600 and if there is a vacancy on Rs. 650 without going into the question of competency or experience or the necessary attainments for that department, immediately he is promoted on the ground that he is drawing Rs. 600 and Rs. 650 is a higher grade. Fortunately in many cases we have not suffered from transferring judicial officers to the executive. There are some here who have discharged their duties to the satisfaction of the people, to the satisfaction of the Government and to the satisfaction of this House, who have been vakils. While we are not very particular to insist upon this rule in regard to all judicial officers and executive officers we are very particular that the Chief Court Judges should on no account be drafted as the executive head of the State, viz., the Diwan. The only good thing I have noticed is that it makes some people very religious. There is a tendency to be religious for our people. They have a peculiar liking for going to the church, mosque or temple and pray for something and here is something to be prayed for and therefore that makes some of the officers very religious. What I suggest is that they must be religious without some such object dangling before their eyes. We do not want to give the least ground to say that the Judges are depending upon anyone in this State so that they have got some ambition which may directly or indirectly, conscionably or unconscionably interfere with that absolute impartiality and that judicial independence, that absolute tendency to hold the balance even between man and man, between the subject and the State. The moment there is something to influence these we have a right to question the judicial impartiality and it is to the interest and to the dignity of the Chief Court that there shall not be the least suspicion, there shall not be the least ground to suspect this absolute impartiality and truthfulness and fearlessness of the judiciary. That is the second point.

The third point is we do not want to think that the Chief Court Judge is a subordinate officer of the Diwan. Though his pay is more their functions are different. One is the executive head and the other is the judicial head. If by any chance the Diwan exerts any power over the judicial head in course of time the people and they themselves will consider that they are the subordinate officers of the Diwan.

For these various reasons, for the sake of purity of justice, for the sake of the dignity and prestige of the Chief Court and also

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for the sake of safeguarding against any imputation of the impartiality of the Chief Court they should be kept apart, and we are therefore anxious that the Government should follow this principle that no Chief Court Judge shall be appointed to the post of the Chief Executive Officer of the State.

മിസ്റ്റർ കെ. അയ്യപ്പൻ.— സർ, ഇംഗ്ലണ്ടിലെ ഹൌസ് ആഫ് ലാഡ്സിൽ ജൂഡിഷ്യറിയെ സംബന്ധിച്ചു കഴിഞ്ഞ മാസത്തിൽ ഒരു ഭേദഗതിബിൽ ആലോചനയ്ക്കു വന്നപ്പോൾ അവിടത്തെ ചീഫ് ജസ്റ്റിസ് പെട്ടെന്ന് ഹൌസ് ആഫ് ലാഡ്സിലേയ്ക്ക് ഓടിവന്ന് ഒരു വലിയ ബഹളം കൂട്ടുകയുണ്ടായി. അന്ന് അവിടെ ആലോചനയ്ക്കു വച്ചിരുന്ന ബിൽ ചീഫ് ജസ്റ്റിസിന്റെ അറിവുകൂടാതെ ഗവൺമെൻറ് കൌശലത്തിൽ ഹാജരാക്കി പാസാക്കുവാൻ ശ്രമിച്ച ഒരു ബില്ലായിരുന്നു. ആ ബിൽ വർത്തമാനപത്രങ്ങളിൽ പ്രസിദ്ധം ചെയ്തതിന് ശേഷമാണ് ചീഫ് ജസ്റ്റിസ് അങ്ങിനെ ഒരു ബിൽ ഉണ്ടെന്നുള്ള വിവരംതന്നെ അറിഞ്ഞതു് എന്നു പറയുകയുണ്ടായി. അങ്ങിനെ ഒരു ബിൽ കൊണ്ടുവന്നതു് ഒരു സോഷ്യലിസ്റ്റു ജഡ്ജിയുടെ സ്ഥാനംകിട്ടാതെ ആക്കുവാൻവേണ്ടിയായിരുന്നു. അന്ന് അവിടെവച്ചു് ആ ചീഫ് ജസ്റ്റിസ് പറഞ്ഞതു്: "I will fight it not only section by section, but word by word. I will adjourn my court everyday this measure comes before the House and come here and fight it" എന്നാണ്. ഇങ്ങിനെ പറയുവാൻ ആ ചീഫ് ജസ്റ്റീസിനു ധൈര്യം എവിടെനിന്നു വന്നു എന്നു നിങ്ങളാലോചിയ്ക്കണം. ചീഫ് ജസ്റ്റിസിന്റെ നിലയിൽ കവിഞ്ഞ ഒരു സ്ഥാനം ചീഫ് ജസ്റ്റീസ് ആഗ്രഹിക്കുകയില്ല. അതുപോലെയുള്ള സ്വാതന്ത്ര്യവും അവകാശനിഷ്ഠയും കാണിക്കുവാൻ നമ്മുടെ ചീഫ് ജസ്റ്റീസിനും ചീഫ് കോടതിയിലെ മറ്റു ജഡ്ജിമാർക്കും കഴുത്തുവരണമെന്നുണ്ടെങ്കിൽ അവർക്കു മറുപ്രകാരത്തിൽ പ്രവൃത്തിക്കാനുള്ള പ്രലോഭനങ്ങളും ഇല്ലാതാകണം. ഞാൻ ഇപ്പോഴുള്ള ജഡ്ജിമാരെക്കുറിച്ചല്ല പറയുന്നതു്. ഇതിന്റെ പൊരുളായ ഒരു പ്രിൻസിപ്പിളിനെക്കുറിച്ചാണു പറയുന്നതു്. ഇന്നു് സുവ്യവസ്ഥിത രാജ്യങ്ങളും സമ്മതിച്ചിട്ടുള്ളതും സ്വീകരിച്ചിട്ടുള്ളതുമായ ഒരു തത്വം,—ജൂഡീഷ്യലും എക്സിക്യൂട്ടിവും രണ്ടും രണ്ടായിരിയ്ക്കണമെന്നും അവ എപ്പോഴും തമ്മിൽ ഇൻറിപ്പെൻഡൻറ് ആയിരിയ്ക്കണമെന്നുള്ള തത്വം—നമ്മുടെ ഗവൺമെൻറിനും സ്വീകരിയ്ക്കുവാൻ യാതൊരു പ്രയാസവുമില്ല.

ഈ നിശ്ചയത്തിലെ തത്വം ഗവൺമെൻറു സ്വീകരിച്ചു പ്രവൃത്തിയ്ക്കുകയാണെങ്കിൽ ഞങ്ങൾ ചൂണ്ടിക്കാണിച്ചതുപോലുള്ള ശക്തിയും, സ്വാതന്ത്ര്യവും, കരുത്തും, കൃത്യനിഷ്ഠയുമുള്ള ഒരു ജൂഡീഷ്യറി നമുക്കു ഉണ്ടാകുവാൻ ഇടവരും. എത്ര വലിയ സ്ഥാനങ്ങൾക്കെതിരായ കേസായിരുന്നാലും നിയമത്തിനും, ന്യായത്തിനും വ്യതിസ്ഥമായ ഒരു വിധി

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കോടതിയിൽ ഉണ്ടാകയില്ലെന്നുള്ള ബോദ്ധ്യവും വിശ്വാസവും ജനങ്ങൾക്കുണ്ടായിരിക്കേണ്ടതാവശ്യമാണ്. അങ്ങിനെയുള്ള വിശ്വാസം വരത്തക്ക നിലയുണ്ടാകുന്നതു ജനങ്ങൾക്കു വലിയ രക്ഷയാണ്. അങ്ങിനെയുള്ള വിശ്വാസം പോകുവാനിടവരുന്നവെങ്കിൽ, നിയമങ്ങൾ എങ്ങിനെയിരുന്നാലും വിധി മറിച്ചുകാരത്തിലാണെന്നുള്ള ധാരണ ജനങ്ങളിൽ കടന്നുകൂടുകയാണെങ്കിൽ അതുപോലെ വലിയൊരാപത്തു് ജനങ്ങൾക്കു വേറെ വരുവാനില്ല. അതുപോലെ തന്നെ ഒരു വലിയ കെടുതി കോടതിയ്ക്കും ഉണ്ടാവാനില്ല.

അതുകൊണ്ടു് ഈ വിഷയത്തിൽ ബഹുമാനപ്പെട്ട ലാമെമ്പറവർകൾ ഇന്നു കാലത്തു് ഒരു സംഗതിയിൽ ചിലതെല്ലാം പറഞ്ഞു ഞങ്ങളെ വിഷമിപ്പിച്ചതുപോലെ വിഷമിപ്പിയ്ക്കാതിരിയ്ക്കണമെന്നു ഞാൻ പ്രത്യേകം അപേക്ഷിച്ചുകൊള്ളുന്നു.

Mr. Thomas Manjuran.—I am very glad that the chance is given to me early in the course of the debate because I am sure otherwise the charge levelled against me in the morning for not giving information earlier in the debate may again be repeated. At the very outset I may say that the Government is fully cognisant of the absolute necessity of preserving the integrity and the independence of the highest court in the land. With regard to the Chief Court it goes without saying that any loss of independence or integrity of that court is bound to react upon the entire judicial system and no modern or civilised Government can ever countenance any fall in the standard of independence of the highest court in the land. So Hon'ble Members need not be under the impression at all that the Government is not fully aware of all the good things that the Hon'ble Members have been so vehemently pressing on the floor of this House. Nor can I understand how there is any real occasion for any fear or any apprehension in the minds of the Hon'ble Members now. It is only very rarely, if ever at all, that a Judge of the Chief Court has been recruited to the highest office in the State. There might be exceptions. But exceptions always occur.

Mr. K. Ayyappan.—But the aspirations always crop up.

Mr. Thomas Manjuran.—There is nothing wrong for a man to aspire provided that he does not aspire with certainty. I can point out three Judges who retired as Chief Judges and who were not appointed as anything else. It is not possible for the Government, much less for me, to probe into the aspirations of individuals. But what we have to consider is what an individual can legitimately look forward to apart from windfalls

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which could not be reckoned. I am sure no judge will anticipate a windfall.

Deputy President.—We can continue the discussion tomorrow.

The House rose for the day at 5 p. m.

C. J. MATHEW,

Secretary to the Council.

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